

Understanding Trademark Likelihood of Confusion: Unfair Competition in a Digital Era

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Abstract

The development of the digital economy have increased risks of unfair competition using inappropriate or obviously false advertising of trademarks through social media. This, however, has erased legal ambiguity regarding the assessment of comparators of the trademarks before confusion for establishing unfair competition through the social networks. The paper distributes comparative research on distinguishing “legal name” and “commercial name” of trademarks before confusion when used for advertising purposes. While legal name is less relevant for the consumer, the commercial name under which undertaking operates on the market is a crucial element for establishing unfair competition. Accordingly, the paper through analytical research focuses on examining the rule of necessity of the cumulative presence of three established comparators: visual, phonetic, and semantic. Also, confusion between trademarks through the prism of unfair competition legislation can arise even without the presence of all these elements. The article provides suggestions to redefine legislative connotations of legal name and commercial name in respective statutory acts. It also recommends amending the notion of misleading commercial practice in Directive 2005/29/EC as the presence of the likelihood of one of the comparator autonomously creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor. As for Directive 2006/114/EC, it should be determined that in cases of misleading and comparative advertising, confusion may arise due to the presence of the likelihood of one of the comparators solely.

Keywords: Unfair competition, social networks, trademark, likelihood of confusion, misleading advertising

Introduction

For developing countries with freshly enacted legislation, the crucial concern in the debate is on how to adjust competition law and international practices to best fit the needs of their markets (Ezrachi & Stucke, 2018). Thus, the issue of the adequacy and appropriateness of the consumers' welfare standard is intertwined with existence of markets with large numbers of participants, fully rational economic agents, and lower levels of market concentration. Consequently, competition regime should be focused on preventive measures in a more holistic paradigm, entailing interdisciplinary approach of competition, intellectual property rights, and consumer protection legislation (Njako, 2024).

Since 2014, the Law of Georgia on Competition has entered into force, and its purpose is to protect free competition from unfair restrictions and to promote healthy competition in the market among economic agents. As a result of the reform carried out in 2020, the law was brought as close as possible to the standard in force in the European Union (Guide Document issued by Georgian National Competition Agency, 2022).

The public body authorized to protect the rights and legal interests of consumers related to misleading activities in relation to trademarks and other distinguishing marks is LEPL Georgian National Competition Agency (GNCA), which is guided by the laws of Georgia on the protection of consumer rights (Law of Georgia on Protection of Consumer rights, 2022) and competition (Law of Georgia on Competition, 2012).

Although the two laws mentioned above regulate different legal relationships, the Law of Georgia on Competition regulates several marks defined by the Law on Protection of Consumer Rights of Georgia. This is with the difference that the competition legislation protects the interests of consumers indirectly under the umbrella of protecting the interests of competing economic agents. Also, the consumer is the direct subject of protection with marks defined by the consumer protection legislation.

The Law of Georgia on Competition has categorized actions considered as unfair competition with respect to a competitor's trademark or other distinguishing mark, the implementation of which leads to misleading consumers. These are:

- a) provision of information about goods by any means of communication (including, through improper, unfair, unreliable or clearly false advertising), which misleads consumers and encourages them to perform certain economic actions;

- b) undermining by an undertaking of a competitor's business reputation (by creating an incorrect impression regarding the undertaking, products, entrepreneurial or trade activities), its unreasonable criticism or discrediting;
- c) misappropriation of a competitor's or a third person's form of goods, their packaging or appearance (Law of Georgia on Competition, 2012).

Methodology

A systematic literature research is done with a view of investigating the question regarding misleading activity of competing economic agent towards consumer. In addition, a literature review will be conducted to understand the concept of misleading activities regarding trademarks and other distinctive signs. It will also address the rules on protection trademarks against unfair commercial practices and misleading advertising in Georgia, European Union, and USA.

Moreover, a systematic legal research on primary and secondary law is conducted for the purpose of analyzing the most significant legislation that governs the unfair competition through the social network in relation to the trademarks before confusion. For this reason, systematic and analytical research was performed on laws of Georgia on competition, trademarks, advertisement and corresponding EU directives, as well as United States code on commerce and trade.

To understand if differences exist in implementation, interpretation and compliance of unfair competition and trademark protection international rules with GNCA practice, a comprehensive study of national and international case law must be conducted. Particularly, it aims to conduct a comparative analysis of the nature and purpose of prohibiting activities that mislead consumers in relation to trademarks and other distinctive signs. As a result, examining practices of GNCA, Supreme and Constitutional Courts of Georgia, CJEU and national courts of EU member states brings challenges of assessing comparators of the trademarks before confusion for bringing unfair competition to light.

Research Questions

As stated above, the purpose of the article is to investigate the practices of the Georgian National Competition Agency regarding the misleading activity towards consumer in relation to the competitor's trademark or other distinguishing signs. Therefore, the following research questions will focus on the challenges and consequences related to the prohibition of unfair commercial activities using social networks:

- Compliance of Georgian legislation on competition and trademark protection with international statutory acts and case law.

- Examining Practice of GNCA regarding unfair competition through the social network in relation to the trademark.
- Examining conceptual difference between terms of “legal name” and “commercial name” of trademarks before confusion when using them for advertising purposes.
- Examining the rule of necessity of the cumulative presence of three established comparators (visual, phonetic and semantic) for determining confusion between trademarks through the prism of unfair competition legislation.

Overview of the Legislation in Force in Georgia Prohibiting Activities that Mislead Consumers in Relation to Trademarks and other Distinctive Signs

Under the Law on Competition, the unfair use of a competitor's trademark or other distinguishing mark is considered a misleading activity towards consumer using any means of communication, including unfair commercial activity carried out through a social network. This is within the scope of which the unfair use of a competitor's trademark significantly changes or is likely to change the average consumer's economic behavior in relation to the goods or services provided or intended for him. The use by a manufacturer of another manufacturer's trademark for intentionally advertising similar goods or services as if those goods or services were produced by a competitor may also be qualified as unfair competition. In addition, comparative advertising that causes confusion with respect to the competitor's trademark, name (designation), and other distinguishing marks can also be considered as consumer misleading advertising by using a competitor's trademark (Law of Georgia on Competition, 2012).

It must be noted that only the manifestation of the prerequisites defined by Article 113 of the Law of Georgia on Competition should not be considered as exhaustive prerequisites for determining unfair competition. Thus, this is because the non-exhaustive list of prerequisites defined by the provision of the said article implies the possibility of considering other alternatives as well (Jorbenadze, 2022).

Accordingly, when evaluating the dishonest action of an economic agent, in the wake of the competition legislation, the trademark and advertising regulatory norms in force in Georgia should also be taken into account.

For the purposes of the Law of Georgia on Trademarks, a trademark is a sign or combination of signs that can be represented graphically and is capable of distinguishing the goods or services or both of one undertaking from those of other undertakings. At the same time, the law states that the sign may be a word or words, including proper names, letters, figures, sounds, a

design or a three-dimensional figure, including the shape of goods or their wrapping and also other packaging, including colours or combination of colours (Law of Georgia on Trademarks, 1999). Based on the above, it is possible to conclude that the graphically represented symbol should be able to distinguish it from the signs denoting other goods and/or services, which fully corresponds to the standard established by the European Court of Justice (C-49/02 Heidelberg Bauchemie GmbH [2004] ECR I- 6129; C-321/03 Dyson Ltd. v. The Registrar of Trade Marks [2007] ECR I – 687).

Of the two methods established worldwide for obtaining special rights to trademarks through the practice of trademark protection, which imply, on the one hand, obtaining a special right by actual use of the trademark, and, on the other hand, obtaining a special right to a trademark through registration of the trademark in the relevant institution, the Georgian regulation provides for only the second one. In particular, the acquisition of the right is effected through the registration of the trademark in Sakpatenti or on the basis of an international agreement (Dzamukashvili, 2012).

The Supreme Court of Georgia, based on the case law of the European Court of Human Rights, expands the rule of determining the moment of origination of the property right on the trademark provided by the national legislation. In addition, it connects the origination of the property right to the moment of registration (C-73049/01, Anheuser-Busch Inc. v. Portugal [GC], ECHR 2007-I) and, in some cases, to the registration application itself (Supreme Court of Georgia, Decision no. № სს-1285-1223-2014).

As for advertising, according to Georgian legislation, it is information disseminated by any means and form about goods, services, work, individuals and legal entities, ideas and initiatives, which aims to facilitate their sale (Law of Georgia on Advertisement, 1998). In addition, the goals of the law include the development of fair competition in the sphere of advertising, protecting public interests and the rights of advertisers and customers, and avoiding and preventing improper advertising. Accordingly, it is clear that the Law of Georgia on Advertising considers the consumer of advertising and the competing economic agent as subjects of protection of relations related to advertising. Hence, this is because confusing information provided by advertisers and distributors may mislead and/or harm them (Law of Georgia on Advertisement, 1998).

Accordingly, the competition regulatory legislation of Georgia stipulates the limitation of advertising activity, if it harms the interests of the consumer and the competing economic agent (Law of Georgia on Competition, 2012). However, the mentioned restriction does not affect the freedom of dissemination and expression of information established by the Constitution of Georgia (Constitution of Georgia, Article 17.1) because it can be limited when the expression threatens the principles and values declared

and protected by the Constitution. In this way, the limitation of the constitutional right to ensure other legitimate good protected by the Constitution can be done (Giorgi Kipiani and Avtandil Ungiadze Against Parliament of Georgia, Decision no. №1/3/421,422; Decision no. №2/482,483,487,502). The Constitution of Georgia, along with the freedom of expression and dissemination of information, protects the development of competition and the rights of consumers (Constitution of Georgia, 1995).

For the purposes of the article, it should be noted that the Georgian National Competition Agency considers cases using only the Law of Georgia on Advertising. It also considers the Directive 2005/29/EC of the European Parliament and the Council of 11 May, 2005 concerning unfair business-to-consumer commercial practices in the international market (Directive 2005/29/EC, 2005) and Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (Directive 2006/114/EC, 2006), as well as the practice of the Court of Justice of the European Union (Decisions of GNCA no. 04/279; no. 04/186).

Cases of Unfair Competition through the Social Network in Relation to the Trademark in the Practice of the Georgian National Competition Agency

In recent years, the GNCA has developed a rich practice regarding cases of unfair use of the trademark of a competing economic agent through social networks. The facts of unfair competition related to the trademark use, in many cases, are related to the dissemination of such information about a competing economic agent through social networks using inappropriate, dishonest, unreliable or obviously false advertising. Thus, this has created a wrong idea for the consumer and has encouraged certain economic actions.

The GNCA believes that social networks, such as Facebook, are one of the means of receiving information. Since the circle of potential customers of competing economic agents is most likely the same, a customer who is interested in purchasing one or another product or service may, after receiving false and/or negative information about the unfair use of another company's trademark through social networks, be misled and form a wrong idea about the product and/or service. This can lead to unhealthy economic actions (Decisions of GNCA no. 04/132 and no. 152).

The practice of the GNCA allows us to categorize the unfair use of the trademark according to the following groups: false and inappropriate advertising, use of the Internet domain, and dissemination of incorrect information.

Like international statutory acts and case law, the practice of the GNCA demonstrates that intellectual property rights play a significant role in

determining misleading commercial practices by setting range of rules for protecting trademarks and other intellectual property assets from misuse in advertising and ensuring fair competition and consumer protection in the marketplace. False advertising often constitutes unfair competition, which is regulated by both intellectual property law and consumer protection laws. Unfair competition laws aim to promote fair business practices by prohibiting deceptive or misleading advertising tactics that give one competitor an unfair advantage over the others. False advertising that misuses trademarks can lead to confusion among consumers about the origin or quality of products or services.

Thus, determining unfair competition through digital platforms may often implicate false advertising that infringes trademark rights of competitor. To exemplify, a commercial practice shall also be regarded as misleading if the marketing of a product creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor (Directive 2005/29/EC, 2005).

False and Inappropriate Advertising

The Georgian National Competition Agency assessed the dissemination of misleading information through communication means, specifically by placing the registered trademark (logo) of a competing economic agent on the official Facebook page as Key Visual (KV), as false and inappropriate advertising. It is worth noting that the agency gave the same assessment to the use of the competitor's logo depicted in the photos and uploaded in the album located on the same page. This includes the publication of photos that confirms the image of the competitor's trademark on the anniversary cake (Decision of GNCA no. 152).

However, in relation to advertisement involving trademarks, false advertising claims require proof that economic agents are competitors. Core principle of relevant legislation states that economic competitors should not deceive consumers by misleading the use of trademark in ways that materially influence their purchasing decisions. Therefore, if advertisements involving trademarks are false or misleading and materially impact consumer decisions, the frames of unfair competition regulations qualifies as an infringement of intellectual property rights (Lemley & McKenna, 2010).

Use of Internet Domain

Regarding the violation of paragraph 2a of Article 11³ of the Law of Georgia on Competition, an important clarification was made by the GNCA on the registration and administration of a website with a similar name owned by a competing economic agent with a similar website domain. Consequently, the GNCA considered that operating a website registered under a specific

domain implies advertising activity. This is in the sense that it helps the user to make a certain choice because the website name, or domain address, is one of the factors that play a certain role by which the result will be chosen and the website the user will go to from the search engine. As the GNCA defines, the average statistical user has an objective expectation that the company's domain name matches the company's name, i.e., its trademark (Decision of GNCA no. 04/279).

Particularly, there are two types of confusion that are relevant to internet domains, namely: ongoing confusion and initial interest confusion. The difference in this type of confusion is determined by the consumer's behaviour upon visiting at the website. Ongoing confusion is seen when some consumers might be misled by unlawful sponsor of internet domain, and they may continue to conduct their transaction. Controversially, initial interest confusion occurs when consumer from search engine, upon arrival at the third-party website, return to their search results page to seek out the desired webpage (Goodstein et al., 2015).

In any case, infringement can be based upon confusion that creates consumer confusion, even though no actual transaction is finally completed as a result of the confusion (McCarthy, 2012).

On the other hand, the GNCA shares the approach of the EU Court of Justice (C-657/11, *Belgian Electronic Sorting Technology NV v Bert Peelaers and Visys NV*) and the EU Directive 2006/114 concerning misleading and comparative advertising (Directive 2006/114/EC, 2006). It was explained that the placement of different types of products and their features on the website domain, concerned by the user's purchase and/or choice, is clearly referred to as "presentation" of goods. Also, it can be taken as advertisement of goods, to which the rules governing unfair competition automatically applies (Decision of GNCA, no. 04/279).

Dissemination of Misleading Information

In relation to the trademark, the GNCA considers as misleading advertising the circumstance when a competing economic agent during advertising events, such as a video broadcast through a social network, phonetically pronounces the name of its company in such a way that the target consumer perceives it as a phonetically identical name of the competing economic agent (Decision of GNCA no. 04/130).

According to the factual circumstances established in this case, the appellant and the respondent economic agents operated in the same commodity market and represented each other's competitors in the market of car repair and sales of car spare parts. The GNCA discussed the similarity of the logos of the agents and determined that the logos of "G.T. Motors Ltd" and "GT Motors Ltd" differ from each other both in terms of color and shape,

as well as in the graphic image printed thereon (see Appendix 1). Therefore, it is obvious that from the point of view of the average statistical objective user, differentiating these two logos is quite possible (Decision of GNCA no. 04/130).

As a result of studying the videos posted by “G.T. Motors Ltd,” GNCA revealed that when talking about the company and the services or goods offered by it, “G.T. Motors” is referred to as “GT Motors.” However, none of the video recordings mentioned that the company has any connection with “GT Motors Ltd.” The GNCA has determined that when advertising the names of competing agents with similar phonetics and letters, it is important for the advertising agent to identify its own company as much as possible and to avoid any confusion with a competitor. The legal name of the undertaking is less relevant for the consumer; the commercial name under which it operates on the market and by which the consumer knows it is of importance. It is likely that similar cases are typical for economic agents that have similar trade marks before the confusion (Decision of GNCA no. 04/130).

We can conclude that the Agency has distinguished between the legal name of the company and its commercial name. In one case, two different legal names may be properly registered with different orthographic signs, and the graphic images may not match. Therefore, it should not cause confusion on the part of the customer, including when advertising products or services.

On the other hand, the Agency under the term "commercial name" considers both: a content (semantic) and sound (phonetic) meaning. Likewise, when the names of the undertakings are only slightly different from each other and they operate in the same market, the customer may get an objective impression that the market activity carried out by one of the companies, including advertising, is related to the actions of another company established and well-known on the market.

In addition, the Agency considers that the registration of graphically different trademarks does not, a priori, create a prejudicial circumstance regarding the fact that their phonetic confusion is excluded. In advertising, graphic (visual) and semantic differences cannot ensure the exclusion of the risk of false association between companies on the part of the customer. Accordingly, a ban was imposed as a sanction on the infringing party when it comes to advertising.

Through prism of intellectual property rights, confusion can occur where alleged infringer uses the trademark. This view is exemplified in different national and international statutory acts, i.e., Lanham Act, where “trademark use” is a direct and implicit requirement to determine infringement (15 U.S.C. § 1114(1.a)). However, likelihood of confusion is a more complex legal challenge for which the use of trademark or its composing elements are one of the aspects for determining infringement in the course of unfair

competition and advertisement through social networks, search engines, online platforms, etc. However, this was proven in practice of GNCA mentioned above (McCarthy, 2008).

In addressing trademark infringement, circumstances must show that the alleged infringer used the competitor's trademark in a commercial communication. Under this analysis, it is explicit that the infringer's misconduct can create confusion among consumers without being considered a direct likelihood of confusion in using all comparators (phonetic, visual, and audio) (Palizzi & Simoni, 2012).

In this regard, it is worthy to mention that the American court decisions (Rosetta Stone Ltd. v. Google, Inc. (Rosetta Stone II), 676 F.3d 144 (4th Cir. 2012), Google, Inc. v. Am. Blind & Wallpaper Factory, Inc., No. 03-5340, 2007 WL 1159950 (N.D. Cal. Apr. 18, 2007)), in contrast to the European decision (Joined Cases C-236/08, C-237/08, C-238/08, Google France SARL v. Louis Vuitton Malletier SA), state that there is no burden of proof regarding the fact that the infringer used the trademark as a separate element from the traditional likelihood of confusion inquiry.

Exclusivity of the Decision of the National Competition Agency of Georgia No. 04/130 and the Difference with the Practice of the European Union

Regarding the determination of the degree of confusion between trademarks, practice that has been established in international and national proceedings requires that the likelihood of confusion must be determined globally, through the perception of the target audience and the evaluation of all relevant circumstances related to the case (C T-162/01, Laboratorios RTB v OHIM). For a likelihood of confusion to exist, the comparable trademarks must be similar or identical. However, the trademarks in question must cumulatively denote similar or identical services or goods (Case T 316/07, Commerc v OHIM). This implied that the low degree of similarity between goods and services neutralizes the identity of the trademarks in question (C-234/06, Ponte Finanziaria v OHIM). In addition, the visual, phonetic, and content (semantic) similarity of the signs is acceptable (T-323/14 - Bankia v OHMI).

The issue is regulated identically in the Georgian legal space, where the main criterion for determining the similarity of symbols during the comparison of opposing trademarks can be auditory (phonetics, musical sound), visual (graphics, color combination), and conceptual (semantics, essence) similarity of symbols. Finally, when comparing symbols, the overall impression is crucial (Order N05 of Georgian Intellectual Property National Centre, 2014). In particular, there is no obvious and eye-catching stylistic difference between the names of the appellation or trademarks of the National Intellectual Property Center of Georgia – Sakpatenti. In addition, their

differentiation is impossible from a visual, phonetic, and semantic point of view. Cumulatively, they may be considered similar trademarks prior to confusion (Georgian Intellectual Property National Centre, Chamber of Appeals Decision No. №106-03/14). The area of use of the mentioned trademarks is also important, which refers to the peculiarities of perception and verbal expression of the trademarks in question by customer groups with different socio-linguistic characteristics (Case T-323/14, Bankia v OHMI). For comparison, Sakpatenti explains in one of the cases that it is important how the Georgian consumer pronounces the names of the competing trademarks (Georgian Intellectual Property National Centre, Chamber of Appeals Decision No. №106-03/14).

As a review of case law reveals, the phonetic element of a trademark plays an important role in determining the likelihood of confusion between comparable trademarks. Confusion of the symbols of the mark in question with an already registered trademark, which is determined by the "common impression", can be the basis for refusing to register the intellectual property right on it or prohibiting its use (Council Regulation (EC) No 207/2009, 2009; Law of Georgia on Trademarks, 1999).

Since, in case No. 04/130, there was no cumulative similarity of all three elements of the trademark (phonetic, semantic and visual elements), which causes the likelihood of confusion on the part of customers, the Agency could not establish the misappropriation of the trademark. In contrast to the above, the GNCA, using misleading advertising, considered confusion of the phonetic sound of the "commercial name" of a trademark that is different in terms of content and appearance as the sufficient fact for establishing unfair competition. The Agency considered confusion of one of the trademark distinguishing comparators as sufficient for determining unfair competition.

For reference, the Commercial Court of Finland considered the use of the identical word "Aarnio" in the name of a competing undertaking by an economic agent in an advertisement placed on its own company's website as misleading advertising (Case No MAO:25/20, Aarnio Design Oy). The Finnish Competition Court was guided by EU case law, which indicates that the use of identical transcriptions of the keyword constituting a trademark on the Internet creates a high likelihood of confusion among Internet users (C-278/08, Die BergSpechte Outdoor Reisen und Alpinschule Edi Koblmüller GmbH v Günther Guni and trekking.at Reisen GmbH, 2009).

Consequently, as to unfair competition in relation to unlawful use of competitor's trademark, the likelihood of confusion is measured through balancing test calling for consideration of the harm derived from consumer confusion. In cases of descriptive or generic use of trademark or other distinctive signs, assessing lasting impression on consumers plays a crucial role in qualifying trademark infringement. Therefore, wrongful lasting

impression caused by inappropriate use of trademark or other distinctive signs might be determined by the use of different components of trademark. Thus, cumulative presence is not required (Barnes & Laky, 2004).

Consequently, for the purposes of the competition regulatory legislation, the Agency did not take into account the rule of necessity of the cumulative presence of all three comparators to determine confusion between trademarks, which can be perceived as a precedent decision for both Georgian and international law (C-328/18 P, EUIPO v Equivalenza Manufactory; Case T-117/20, El Corte Inglés, SA v EUIPO; Decision of Polish Supreme Court no. I CSK 263/1).

Conclusion

Along with the development of the digital economy, the share of economic agents advertising their products and services through social networks and the Internet has increased, which is a global challenge. As a result of the above, during the consideration of disputes by the Georgian National Competition Agency, in many cases, it adopts international best practices. For example, it qualifies a domain as advertising for a trademark and it identifies inappropriate and false advertising through social networks.

The Agency has developed a different practice regarding the distribution of misleading information related to the trademark. Case law deliberated by the Georgian National Competition Agency (GNCA) sheds light on the nuanced aspects of trademark confusion, particularly in the context of advertising and commercial communication. The GNCA's decision underscores the importance of distinguishing between the legal name of a company and its commercial name, emphasizing the significance of the latter in consumer perception and market competition. In particular, for the purposes of competition, the Agency interpreted the company's "legal name" and "commercial name" independently of each other and determined that when the commercial name is used for advertising purposes, its graphic (visual) and semantic difference cannot ensure the elimination of the risk of false association between companies by the customer.

Accordingly, the Agency, for the purposes of determining unfair competition, considered confusion of one of the three established (visual, phonetic and semantic) comparators of trademarks as sufficient - thereby interpreting differently the rule of necessity of the cumulative presence of all three comparators to determine confusion between trademarks. Despite graphical disparities between trademarks, phonetic similarity and commercial context can still lead to consumer confusion, especially in advertising campaigns and social media platforms. Furthermore, the new approach reflects the complexities of trademark infringement and the evolving legal landscape surrounding it. While traditional assessments of likelihood of

confusion typically consider all comparators (phonetic, visual, semantic), the case law demonstrates that confusion can arise even without the presence of all these elements, particularly in the realm of online advertising and commercial communication.

Comparative analysis with American and European court decisions further elucidates the varying legal standards regarding trademark infringement. While American courts have shown flexibility in considering trademark use as a standalone factor in determining confusion, European courts have upheld a more traditional approach that integrates multiple elements of confusion assessment.

In essence, the GNCA's approach in determining unfair competition in digital platforms underscores the need for a comprehensive understanding of trademark law and its application in the rapidly evolving landscape of advertising and commercial communication, both domestically and internationally.

Presented findings urges to emend couple of international statutory acts, including Directive 2005/29/EC, commonly known as the "Unfair Commercial Practices Directive." This aims to regulate unfair business-to-consumer commercial practices within the internal market of the European Union (EU) and European Economic Area (EEA).

To ensure avoidance of misleading or deceptive practices regarding trademarks and trade names used in commercial activities through social networks, it was suggested to revise provision of article 6.2 of the Unfair Commercial Practices Directive. Specifically, commercial practice shall also be regarded as misleading "if, in its factual context, taking account of all its features and circumstances including presence of the likelihood of one of the following comparators autonomously (phonetic, visual, semantic), it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves: any marketing of a product, including comparative advertising, which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor."

Preferably, the preamble of Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006, concerning misleading and comparative advertising, should encapsulate statement regarding comparative advertising as follows: "use of competitor's trade mark, trade name or other distinguishing marks breach this exclusive right in cases even if it complies with the conditions laid down by this Directive, but the intended target is not able to solely distinguish between them and thus confusion arise by the presence of the likelihood of one of the following comparators autonomously: phonetic, visual, semantic."

Furthermore, to ensure legal foreseeability and clarity on national levels, states should undertake respective legislative actions to determine that

misappropriation and creating an incorrect impression regarding competitors' products implies infringement of "trademark, trade name, and other distinguishing marks." Consequently, the Law of Georgia on Competition should be amended in a way that ensures inclusion of "trademark, trade name, and other distinguishing marks" as independent, explicit ground for unfair competition and misleading advertising. Emphasis should be placed on the autonomous presence of phonetic, visual, and semantic comparators of trademarks, trade names (commercial name), and other distinguishing marks. Lastly, it is recommended to consider adding clearer definitions or distinctions between "legal name" and "commercial name" of trademarks, especially in the context of advertising purposes on the national and international levels. This can help in providing better guidance for determining unfair competition.

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Appendix 1.

